

Appl. No. : 10/522,002
Filed : October 21, 2005

REMARKS

In response to the Office Action mailed April 11, 2007, the Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following remarks.

Summary of the Office Action

In the April 11, 2007 Office Action, Claims 2, 8, and 10-13 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which application regards as the invention. Claims 1, 2, 5, 9, and 14-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,461,160, issued to Sutter (hereinafter "Sutter"). Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sutter. Further, Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sutter in view of U.S. Patent No. 5,328,371, issued to Hund et al (hereinafter "Sutter in view of Hund"). In addition, Claims 14 and 20, as well as the title of the invention are objected to.

Summary of the Amendment

Upon entry of this amendment, Applicants will have amended Claims 1, 2, 6, 8-10, 14, and 20. Applicants will have canceled Claim 4 without prejudice or disclaimer. Further, Applicants will have submitted new Claims 21-26 for consideration. By this amendment, the Applicants respond to the Examiner's comments and rejections made in the April 11, 2007 Office Action. Please note that in the amendments to the claims, deletions are indicated by strikethrough (e.g. ~~deletion~~) or double brackets (e.g. [[word]]) and additions to the claims are underlined (e.g. addition). Applicants respectfully submit that the present application is now in condition for allowance.

Allowable Subject Matter

Applicants note with appreciation that the Examiner indicated Claims 4 and 6 are objected to as being dependant upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Further, the Examiner noted that Claims 8 and 10-13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in the Office Action and to include all of the limitations of the base claim and any intervening claims.

Accordingly, Claim 1 has been amended to incorporate the features of original Claim 4. Similarly, Claim 20 has been rewritten to incorporate the features of original Claim 8, and was also amended to address the rejection under Section 112, second paragraph. As amended, these claims address the rejections noted in the Office Action and also include clarifying amendments. Applicant submits that these claims and their dependent claims are therefore in condition for allowance.

Amendment to the Title of the Invention

Applicants have amended the title of the invention to address the objection of the Examiner. Accordingly, Applicants request that the Examiner indicate that the title is now acceptable.

In Re Rejection under 35 U.S.C. § 112, Second Paragraph and Claim Objections

In the Office Action, Claims 2, 8, and 10-13 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which application regards as the invention. It is noted that the recitation of “the outsides of the spacer and of the implant” in Claim 2 and “the corners” in Claim 8, and “the direction of rotation” in Claim 10 lack sufficient antecedent basis, and that it is unclear what is “in rounded corners” and which of the configurations (i.e. rounded or not) to which “a corresponding configuration” applies in Claim 8. Further, Claims 14 and 20 were objected to and correction was required.

Applicants have amended Claims 2, 10-13, 14, and 20 in order to address each of the rejections and objections made in the Office Action. As also noted above, Applicants have incorporated the features of Claim 8 into Claim 1 and amended the language thereof to address the rejection of Claim 8 under Section 112, second paragraph. Applicants believe that such amendments overcome each of the noted rejections and objections. Accordingly, Applicants

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request that the Examiner withdraw the rejections and objections and indicate that these claims are allowable.

Traversal of Rejections under 35 U.S.C. §§ 102(e) and 103(a)

In the Office Action, Claims 1, 2, 5, 9, and 14-20 stand rejected under 35 U.S.C. § 102(e) and Claim 3 stands rejected under 35 U.S.C. § 103(a). Applicants respectfully disagree with these rejections. However, in order to expedite the allowance of the present application, Applicants have amended Claim 1 and 20 to incorporate the features recited in objected-to Claims 4 and 8, respectively. Applicants reserve the right to prosecute the rejected claims in their original or similar form in a continuing application.

New Claim 21-26

Applicants also hereby submit new Claims 21-26 for consideration. New Claim 21 is objected-to Claim 10 written in independent form. In the Office Action, the Examiner objected to Claim 10 and indicated that it would be allowable if rewritten in independent form. Therefore, new Claim 21 includes the features of objected-to Claim 10 and its base claim, Claim 1, and should be allowable for at least this reason. Further, new Claims 22-26 recite further features and should be allowable for at least the reason that they depend from an allowable base claim. Applicants respectfully submit that Claims 21-26 are allowable and request the Examiner to indicate allowance of the same.

CONCLUSION

The Applicants respectfully submit that the above rejections and objections have been overcome and that the present application is in condition for allowance. Therefore, the Applicants respectfully request that the Examiner indicate that Claims 1-3 and 5-26 are acceptable and that Claims 1-3 and 5-26 are allowed. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Applicants respectfully submit that the claims are in condition for allowance in view of the above remarks. Any remarks in support of patentability of one claim, however, should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks

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referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Applicants also have not presented arguments concerning whether the applied references can be properly combined in view of, among other things, the clearly missing elements noted above, and Applicants reserve the right to later contest whether a proper motivation and suggestion exists to combine these references.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claim and drawings in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call the Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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